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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,880	02/04/2004	David Chappell	CULLP0181US	3821

23908 7590 08/25/2006

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EXAMINER
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HOGAN, JAMES SEAN

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

58

<b>Office Action Summary</b>	<b>Application No.</b> 10/771,880	<b>Applicant(s)</b> CHAPPELL ET AL.	
	<b>Examiner</b> James S. Hogan	<b>Art Unit</b> 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-4 and 6 is/are rejected.  
7) ☒ Claim(s) 5 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 04 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/19+ 2/4/04*</u>   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,785,785 to Delmer et al in view of U.S. Patent No. 5,687,909 to Dean and further in view of U.S. Patent No. 3,199,817 to Fox

Regarding claim 1, Delmer et al teaches a soaker hose having opposed ends, a top wall (48) and a bottom wall (46), the top wall being provided with a plurality of openings (22) through which water can pass. Delmer et al does not teach a ground spike. Dean teaches a ground anchor having a sleeve (60), a stake (44) having an (unnumbered) axis that is at a 90° angle to a hose going through its aperture (60). Neither Delmer et al or Dean teaches a plug associated with a soaker hose in combination with a ground spike. Fox teaches a fixed integrated plug (1) and ground spike (2) for the purpose of sealing a soaker hose. As per claim 2, the sleeve of the ground spike of Dean is provided with a flattened top portion (58, and 46)). As per claim 3, the soaker hose of Delmer et al is provided with visual identification means (452) to clearly identify if the hose is in the correct "upright" position. None of the aforementioned patents explicitly teach a hose reel, however Official Notice is taken to the existence of various depictions of wind-up hose reels being notoriously well known

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in the art. As per claim 6, the indicia (452) on the top of the hose of Delmer does is not described as being of a contrasting color, however it has been held to be obvious to one having ordinary skill in the art at the time the invention was made to provide a color to an apparatus involves only routine skill in the art. Summarily, it would have been obvious to one having ordinary skill in the art to combine the soaker hose of Delmer et al with the ground spike of Dean, the ground spike of Dean being modified by the plug teachings of Fox in order to create a irrigation assembly for use in any agricultural setting.

### ***Allowable Subject Matter***

Claims 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is as follows:

U.S. Patent No. 5,673,858 to Krohn, showing a spray system

U.S. Design Patent No. D284785 to Lemkin et al, disclosing a ground spike

U.S. Patent No. 7,066,403 to Heren et al, disclosing a sprinkling system

U.S. Patent Application Publication No. US 20030150963 to Doring

U.S. Patent No. 5,881,495 to Clark, disclosing a turf stake

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U.S. Patent No. 5,549,262 to Whitehead, disclosing a hose guide

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Hogan whose telephone number is (571) 272-4902. The examiner can normally be reached on Mon-Fri, 7:00a-4:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSH  
8/9/2006

  
**ERIC KEASEL**  
**SUPERVISORY PATENT EXAMINER**  
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